IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2495 OF 1986

Madhukar Bhimaji Kharat ... Petitioner

V/s

Yashodabai G. Ghule ... Respondent

Mr. P.J. Shinde for the petitioner.

None present for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 20TH MARCH, 2006

ORAL JUDGMENT:

1. Heard learned counsel for the petitioner. None appears for the respondent.

2. This petition is aimed against the judgment and order passed by the District Judge, Pune, dated 18.3.1986 allowing the appeal and setting aside the order passed by the Trial Court and decreeing the suit for possession of the suit premises in favour of the present respondent landlord evicting the present petitioner from the suit premises which consisted of Room No. 88 in House No.61 at Ghulewadi, Dapodi, Pune.

3. The original plaintiff Yashodabai filed the suit against the original petitioner-defendant in Small Causes Court, Pune, for recovery of possession of the premises on the ground of default in payment of arrears of rent for more than six months and on that ground seeking possession of the suit premises after giving notice of termination of the tenancy. On receipt of the notice which was duly replied to by the present petitioner, he also filed an application for fixation of standard rent wherein standard rent came to be fixed and rent amount was duly deposited in the Court.

Pending the suit in the month of July, 1981 amendment was sought to the plaint by the plaintiff seeking one more ground for eviction as contemplated under Sec. 13 (1)(g) of the Bombay Rent Act alleging that the tenant had made additions and alterations of the permanent nature in the suit premises without his permission by constructing loft in the premises.

The learned Trial Judge adjudicated the dispute on merits holding that the plaintiff had failed to prove any of the grounds alleged against the defendant and dismissed the suit for possession of the suit premises.

4. The appeal was carried to the District Court, Pune. The learned District Judge, after hearing both parties came to the conclusion that the evidence on record was sufficient to show that ingredients of Sec. 31 (1)(g) were proved to the effect that the loft was constructed by the tenant in the month of May, 1981 or thereabout and, therefore, as it was contrary to the contract between the parties, decree for eviction came to be passed. Hence the present petition.

4. At the outset, it may be noted that the learned counsel for the petitioner has raised only one issue challenging the order passed by the lower appellate Court. It was submitted that the learned lower appellate Court has wrongly appreciated the evidence on record in the sense that he has shifted the burden on the defendant tenant illegaly in order to prove that construction was not made by him instead of putting the burden to prove on the plaintiff landlord to establish that the defendant had in fact constructed the loft unauthorizedly and thereby made permanent alterations without consent of the landlord in the month of May, 1981 or thereabout i.e. pending the suit.

5. On perusal of the entire evidence on record vis-a-vis the reasoning adopted by the learned lower appellate Court Judge, it is found that, in the year 1981 certain construction activity was proceeded with by the tenant defendant. It is sought to be explained on behalf of the petitioner defendant that the Municipal Corporation notice was received by him on the ground that the suit premises was in dilapidated condition and needed urgent repairs and, as such, he just carried out repairs and did not make any construction in respect of the loft in the suit premises. It is also the case of the petitioner that the loft was constructed since the beginning of its tenancy. As against this, the plaintiff has urged that taking disadvantage of the Municipal Corporation notice for repairs, the tenant had in fact constructed loft unauthorizedly in the suit premises.

6. In this regard as can be seen from the record, it is word against word between the parties so far as the alleged construction activity is concerned. However, the lower appellate Court has taken a view that when the petitioner defendant admitted that there was activity of so-called repairs in the suit premises consequent upon the Municipal Corporation notice for repairs and he had

engaged a contractor to carry out the repairs, it was necessary for the defendant to examine the said contractor in order to establish what type of repairs were made in the suit premises.

7. On this back ground it was inferred by the lower appellate Court Judge that, once the petitioner had admitted the repairs activity in the suit premises in the year 1981, then the burden did shift on him to show that the repair activity was confined only to the repairs to the premises and not to the construction which was found to be made in the suit premises which fact was already proved by the Court Commissioner's report which shows that there was loft in the suit premises as alleged by the plaintiff.

7. In my considered view, the reasoning adopted by the learned lower appellate Court holding that the burden had shifted on the petitioner appears to be just, legal and proper especially in absence of any rebuttal evidence to the contrary and, therefore, I do not see any reason to interfere in the order passed by the lower appellate Court Judge while decreeing the suit in favour of the plaintiff.

8. Under the circumstances, the petition appears to be devoid of any merits and stands dismissed with no order as to costs.

9. At this stage, the learned counsel for the petitioner seeks stay of this order. In view of the facts and circumstances, the execution of the decree shall not be effected for six weeks from the date of this order.

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